IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2007

C O R A M

THE HONOURABLE Mr.JUSTICE K.VENKATARAMAN

W.P.No.12238 of 2007
and
M.P.No.1 of 2007

S.Jayaseelan ... Petitioner

- Vs. -

1. The Director of Adi Dravidar
and Tribal Welfare, Chepauk, Chennai.

2. The District Adi Dravida Welfare Officer,
Tiruvallur District, Tiruvallur. ... Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified mandamus calling for the records relating the proceedings in J5/5874/2007 dated 27.02.2007 passed by the second respondent and quash the same and further direct the respondents to settle all the retirement benefits due to the petitioner.

For Petitioner : Mr.S.Kamadevan

For Respondents : Mr.G.Sankaran,
Special Government Pleader.

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O R D E R

The petitioner has come forward with the present writ petition challenging the order of Second respondent dated 27.02.2007 in an by which the petitioner was placed under suspension.

2. The facts in nutshell which is necessary for the disposal of the present writ petition is as follows:

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The case of the petitioner is that he was working as Head Master, Government Adi Dravidar Middle School, Maduravoil, Chennai and attained the age of super-annuation on 28.02.2007. Though he is entitled to get re-employment and continue in service till 31.05.2007, due to his health conditions he did not seek re-employment. On 28.02.2007 he was relieved from service. After his retirement, the second respondent forwarded the impugned order of suspension dated 27.02.2007 and the same was served on 02.03.2007. The impugned order of suspension was passed by the second respondent under Rule 17(c)of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules stating that an enquiry into grave charges is contemplated. Apart from that it is also stated that the charges have been framed on 27.02.2007 and the enquiry is pending in respect of the above charges.

3. Counter affidavit has been filed by the respondents wherein it has been contended that originally the petitioner was suspended from service with effect from 01.04.2004 by proceeding No.10551/04/J5 dated 01.04.2004, since the petitioner involved in misappropriation of loan amount of Rs.20,44,575/- from Harijan Welfare School Employees Co-operative Theft and credit Society at Sevvapet Road, Tiruvallur Taluk and a Criminal case was pending under investigation. Thereafter the order of suspension has been revoked and the petitioner joined duty on 07.01.2005. While so, by the proceedings of the second respondent dated 27.07.2005, the petitioner was placed under suspension. He was placed under suspension with effect from 28.02.2007. Several cases are pending against him and he has to settle a sum of Rs.20,44,575/- and hence by virtue of the order of suspension he has not been permitted to retire from service.

4. Mr.S.Kamadevan, learned counsel appearing for the petitioner has contended

(a) that the order of suspension cannot be sustained in law in as much as the same is served on the petitioner after his retirement.

(b) the second respondent has not passed any order retaining the petitioner in service which is mandatory.

5. Per contra, the learned Special Government Pleader appearing for the respondent contended

(a) that the order of suspension was passed by the second respondent against the petitioner on 27.02.2007 and it has been communicated to the petitioner through Special Tahsildar, Ponneri and hence it is deemed to have been served on the petitioner on 27.02.2007 itself.

(b) Since an order of suspension has been passed against the petitioner before his retirement on 28.02.2007, it is deemed to be an order retaining the petitioner in service beyond 28.02.2007, the date when the petitioner has attained super-annuation.

6. I have heard the learned counsel appearing for the petitioner as well as the learned Special Government Pleader appearing for the respondents.

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7. It is an admitted case that the petitioner has reached the age of super-annuation on 28.02.2007. It is further admitted that an order of suspension has been passed against the petitioner on 27.02.2007. The impugned order sought to be served on the petitioner through Special Tahsildar, (ADTW), Ponneri. An endorsement made by the Special Tahsildar shows it is sought to be served on the petitioner on 28.02.2007. The question that arises for consideration is whether the order of suspension is valid, in view of the fact that it was served on the petitioner only on 02.03.2007. As stated already, the order of suspension was passed on 27.02.2007 and it was sought to be served on the petitioner through Special Tahsildar,(ADTW), Ponneri and the endorsement of the said official shows that it was sought to be served on the petitioner on 28.02.2007. Though the petitioner has received the order of suspension on 02.03.2007, it has to be held that an order of suspension no sooner it is sent out from the office of the authority who has passed an order must be deemed to have been served on the party who is placed under suspension and it comes into effect immediately. Once the order has been passed and sent out, it must be deemed to have been communicated to the person against whom the said order has been passed, no matter when it is served on the said person. The communication of the impugned order is essential and not actual receipt of the same by the official concerned. Thus, I am persuaded to accept the view that no sooner the order has been passed and sent out for serving, it shall be the crucial date and not the date when the same was received by the person concerned. If different view could be taken namely that the actual date of receipt has to be taken in account, it would be possible for a Government servant to thwart an order by effectively avoiding receipt of it by one method or other till he achieves his object. Hence I am constrained to hold that the order of suspension having been passed on 27.02.2007 is well before the petitioner could attain the age of superannuation and the receipt of this order cannot be taken into consideration.

8. The next question that has to be decided in this writ petition is whether an order of suspension alone is sufficient or the further order retaining the petitioner in service is required. Admittedly, in this case except the order of suspension dated 27.02.2007, no further order retaining the petitioner in service has been passed by the second respondent. In the counter affidavit filed by the second respondent, it has been stated that the petitioner was not permitted to retire from service. In page No.5 of the counter affidavit it has been stated as follows:-

> He has to settle Rs.20,44,575/- towards C.C.No.203 to 205/2000 and C.C.No.71 to 124/2004 for which the cases are pending against him hence he was not permitted to retire from his service. However he is eligible for the subsistence allowances as per the rules in force.

Though it has been stated that the petitioner was not permitted to retire from service, when a specific question was put to the learned Special Government Pleader, when such an order was passed, he is enable to rely on any order of the second respondent showing that the petitioner was retained in service. Thus it is crystal clear that no order has been passed by the second respondent retaining the petitioner in service,

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before the petitioner could attained the age of super-annuation. Then the next question that arises is whether in the absence of such an order mere order of suspension of the petitioner alone is sufficient to retain him in service after he attaining the age of superannuation.

9. Mr.S.Kamadevan, learned counsel appearing for the petitioner vehemently contended that the mere order of suspension even assuming that it has been passed before the petitioner attained the age of super-annuation, is not sufficient and a further order retaining the petitioner in service is mandatory.

10. Per contra, the learned Special Government Pleader contended that the order of suspension passed against the petitioner itself sufficient without further any order. The learned Special Government Pleader submitted that the petitioner has misappropriate the huge amount and hence he cannot be allowed to go Scot-free.

11. The order of suspension or disciplinary proceeding that if any initiated against the petitioner will be in force till the Government service retires from service on completing the age of 58 years. Therefore, there should be an order passed by the competent authority viz., the second respondent herein so as to retain him in service. Thus there should be a separate order retaining the petitioner in service. In this connection it would be useful to refer Rule 56(c) of the Fundamental Rules, which reads as follows:-

> (c) "Notwithstanding anything contained in clause (a), a Government servant who is under suspension,
>
> (i) on a charge of misconduct; or
>
> (ii) against whom an enquiry into grave charges of criminal misconduct of allegations of criminal misconduct, is pending; or
>
> (iv) against whom a complaint of criminal offence is under investigation or trial shall not be permitted by the appointing authority to retire on his reaching the date of retirement, but shall be retained in service until the enquiry into the charge of misconduct or criminal misconduct or the enquiry into allegations of criminal misconduct or the enquiry into contemplated charges or disciplinary proceedings taken under Rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or rule 3(c) of the Tamil Nadu Police Sub-ordinate Service(Discipline and Appeal)Rules, as the case may be, in respect of item(iv) above is concluded and a final order passed thereon by the competent authority concluded and a final order passed thereon by the competent authority or by any higher authority."

The above rule clearly points out that in order to continue the disciplinary proceedings against a person who is under verge of retirement, a mere order of suspension alone is not sufficient. But a further order retaining the said person in service shall be passed by the competent authority. If no further order is passed, the mere order of suspension alone is not sufficient.

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12. This view has been taken in an unreported Judgement of this Court in W.P.No.2821 of 2001 and 3877 of 2001 dated 11.03.2002, which reads as follows:

> "In the above back ground, there is no purpose in merely emphasising on the nature of the charges against the petitioner. What ever the grounds of charges might be, when the respondents are taking care to issue of suspension order on the last date, it is equally incumbent on them to pass a separate order, not permitting the petitioner retiring from service. The failure on the part of the respondent can be termed as gross negligence or deliberate negligence. However, the impugned proceedings cannot be sustained for the reasons stated above."

13. The Division Bench of this Court had an occasion to deal with the present question namely whether the order of suspension alone, passed against the Government Servant before retirement is sufficient without a further order retaining him in service, which is reported in 2005 (3) CTC 4, The State of Tamil Nadu, rep. By the Commissioner and Secretary to Government, Home Department, Fort. St. George, Chennai-9 and others Vs. R.Karuppiah, Inspector of police(Under Order of Suspension), Manamadurai Circle, Sivagangai District and another. Their Lordships in the said Judgment have clearly held in para 29 as follows:

> "From the above note it is also clear that to proceed against a Government servant, who is under suspension on a charge of misconduct, after his retirement, the fulfilling of the requirements under Rule 56(1)(c) of the Fundamental Rules is a mandatory one, otherwise, the competent authority cannot have any jurisdiction on the retired Government servant to proceed against him and the non-compliance of the said rule is vitiated all the proceedings initiated against the first respondent and therefore, the same are not sustainable under law and are liable to be set aside."

14. Thus the reading of Rule 56(c) of the Fundamental Rules and the judgment referred to above, will amply make it very clear that a mere order of suspension on the petitioner before his retirement without passing further order retaining the petitioner in service before he attained the age of super-annuation which is mandatory as per Rule 56(i)(c) will vitiate the entire proceedings against the petitioner and the same is not sustainable under law and are liable to be set aside.

15. In the result, I am constrained to hold that the impugned order of the second respondent dated 27.02.2007 is liable to be quashed and accordingly quashed. The writ petition stands allowed. Consequently, M.P.No.1 of 2007 is closed. No costs.

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After the orders have been pronounced, learned counsel for the petitioner submitted that since the petitioner has already retired and the service benefits have not been settled so for, in view of the orders passed today, the respondents may be directed to settle the entire terminal benefits to the petitioner.

2. Considering the said genuine request, the first respondent is directed to settle the entire terminal benefits to the petitioner within a period of four weeks from the date of receipt of a copy of this Order.

rrg

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Director,
   Adi Dravidar and Tribal Welfare,
   Chepauk, Chennai-600 005.

2. The District Adi Dravida Welfare Officer,
   Tiruvallur District, Tiruvallur.

+1 cc to Government pleader Sr.No.51564.

+1 cc to Mr.s.Kamadevan, Advocate Sr.No.51402.

MDR(CO)
dcp/28.8

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